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9 YOUTH CHARITIES, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 CAL-PAL, INC.,

13 Plaintiff,

14 v.

15 CALIFORNIA POLICE YOUTH
16 CHARITIES, INC.,

17 Defendants.

Case No. CV-08-1991-JCS

**ANSWER OF DEFENDANT CALIFORNIA
POLICE YOUTH CHARITIES, INC. TO
PLAINTIFF'S COMPLAINT**

DEMAND FOR JURY TRIAL

Assigned to Honorable Joseph C. Stero

18 COMES NOW, defendant CALIFORNIA POLICE YOUTH CHARITIES,
19 INCORPORATED, and in answering plaintiff's complaint on file herein admits, denies, and
20 alleges, as follows:
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22 1. With respect to paragraph 1 of the Complaint, defendant lacks sufficient
23 information to admit or deny the allegations therein.

24 2. With respect to paragraph 2 of the Complaint, defendant admits that California
25 Police Youth Charities is a non-profit organization, incorporated in 2002, and that it acquires a
26 portion of it's funding through telemarketing for donations, but denies the remaining allegations
27 therein.
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1 3. With respect to paragraph 3 of the Complaint, defendant denies that this case
2 arises under the trademark laws of the United States, and thus denies that this Court has
3 jurisdiction under U.S.C. Sections 1051, et seq., but admits that this Court has jurisdiction under
4 the Lanham Act.

5 4. With respect to paragraph 4 of the Complaint, defendant admits that this Court has
6 supplemental jurisdiction.
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8 5. With respect to paragraph 5 of the Complaint, defendant admits that venue is
9 proper in this District.

10 6. With respect to paragraph 6 of the Complaint, defendant denies this is an
11 Intellectual Property Action, exceptd from assignment under Local Rule 3-2 (c).

12 7. With respect to paragraph 7 of the Complaint, defendant lacks sufficient
13 information to admit or deny any of the allegations therein, and on that basis, denies each
14 allegation.
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16 8. With respect to paragraph 8 of the Complaint, defendant admits that Telcom raised
17 money for Cal-Pal for many years, but denies the remaining allegations therein.

18 9. With respect to paragraph 9 of the Complaint, defendant denies the allegations
19 contained therein.
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21 10. With respect to paragraph 10 of the Complaint, defendant denies the allegations
22 contained therein.

23 11. With respect to paragraph 11 of the Complaint, defendant denies the allegations
24 contained therein.

25 12. With respect to paragraph 12 of the Complaint, defendant denies the allegations
26 contained therein.
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1 13. With respect to paragraph 13 of the Complaint, defendant denies the allegations
2 contained therein.

3 14. With respect to paragraph 14 of the Complaint, defendant denies the allegations
4 contained therein.

5 15. With respect to paragraph 15 of the Complaint, defendant reincorporates by
6 reference its responses to paragraphs 1-14, respectively.

7 16. With respect to paragraph 16 of the Complaint, defendant denies the allegations
8 contained therein.

9 17. With respect to paragraph 17 of the Complaint, defendant denies the allegations
10 contained therein.

11 18. With respect to paragraph 18 of the Complaint, defendant reincorporates by
12 reference its responses to paragraphs 1-14, respectively.

13 19. With respect to paragraph 19 of the Complaint, defendant denies the allegations
14 contained therein.

15 20. With respect to paragraph 14 of the Complaint, defendant denies the allegations
16 contained therein.

17 21. With respect to paragraph 21 of the Complaint, defendant reincorporates by
18 reference its responses to paragraphs 1-14, respectively.

19 22. With respect to paragraph 22 of the Complaint, defendant denies the allegations
20 contained therein.

21 23. With respect to paragraph 23 of the Complaint, defendant denies the allegations
22 contained therein.

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SEPARATE AND AFFIRMATIVE DEFENSES

AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE to Plaintiff's Complaint on file herein, this answering defendant is informed and believes and thereon alleges that the Complaint fails to state facts sufficient to constitute a or any claim against this answering Defendant.

AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE to Plaintiff's Complaint on file herein, this answering Defendant alleges that Plaintiff's Complaint is barred by any and all applicable statutes of limitation, including, but not limited to, California Code of Civil Procedure §§ 337, 338, 339, 340 and 343 and California Business and Professions Code § 17208.

AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE to Plaintiff's Complaint on file herein, this answering Defendant alleges that Plaintiff, by its knowledge, statements and conduct, and the knowledge, statements and conduct of its agents, employees and representatives, has voluntarily, expressly or impliedly, waived its right to assert any claim against these answering defendants as alleged in the Complaint.

AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE to Plaintiff's Complaint on file herein, this answering Defendant alleges that Plaintiff is equitably estopped from asserting the claims asserted in the Complaint because plaintiff and its agents engaged in acts, omissions, silence and other conduct inconsistent with the claims plaintiff now alleges, i.e., plaintiff invited and voluntarily participated in the acts complained of in the Complaint. In so doing, plaintiff knew defendant would rely upon such acts, omissions, silence and other conduct, and defendants did, in fact, reasonably rely upon such acts, omissions, silence and other conduct, to their detriment. Thus, plaintiff is barred from any recovery from defendant in this action.

1 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
2 to Plaintiff's Complaint on file herein, this answering Defendant alleges that, at all times relevant
3 hereto, it acted as a prudent, reasonable entity, in light of the circumstances.

4 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
5 to Plaintiff's Complaint on file herein, this answering Defendant is informed and believes, and
6 thereon alleges that the injuries or damages allegedly suffered by plaintiff were caused and
7 contributed to, in all or in part, by the negligence or fault of plaintiff, or others, and said acts or
8 omissions entitle defendant to contribution from said individuals and entities, and each of them.

9 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
10 to Plaintiff's Complaint on file herein, this answering Defendant alleges that any and all damages
11 sought by plaintiff will unjustly enrich plaintiff and contravene the principles of equity.

12 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
13 to Plaintiff's Complaint on file herein, this answering Defendant alleges that plaintiff inexcusably
14 and unreasonably delayed giving notice to defendants, causing substantial prejudice to defendant.
15 Therefore plaintiff's causes of action are barred by the equitable doctrine of laches.

16 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
17 to Plaintiff's Complaint on file herein, this answering Defendant alleges that because of plaintiff's
18 own wrongful conduct, plaintiff's action is barred under the equitable doctrine of unclean hands.

19 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
20 to Plaintiff's Complaint on file herein, this answering Defendant alleges that plaintiff's motives in
21 bringing this lawsuit are retaliatory and, as a matter of public policy, should be barred.

22 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
23 to Plaintiff's Complaint on file herein, this answering Defendant alleges that plaintiff has
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1 expressly or impliedly by operation of law excused defendant from any and all obligations, if any,
2 relating to the Complaint, and as to each and every cause of action alleged therein.

3 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
4 to Plaintiff's Complaint on file herein, this answering Defendant alleges that on information and
5 belief, plaintiff failed to take any action to mitigate its damages, therefore, any recovery by
6 plaintiff is barred by plaintiff's failure to mitigate damages, or any recovery must be reduced by
7 those damages that plaintiff could have, but failed to mitigate.
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9 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
10 to Plaintiff's Complaint on file herein, this answering Defendant alleges that plaintiff's losses, if
11 any, are speculative and/or uncertain, and therefore, not compensable.
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13 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
14 to Plaintiff's Complaint on file herein, this answering Defendant alleges that defendant is
15 informed and believes and thereon alleges that the Complaint and each purported cause of action
16 contained therein is barred because of the plaintiff's fraud and/or misrepresentations.
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18 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
19 to Plaintiff's Complaint on file herein, this answering Defendant alleges that the injury or
20 damages plaintiff allegedly suffered were solely the result of causes independent of the purported
21 acts or omissions on the part of defendant.

22 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
23 to Plaintiff's Complaint on file herein, this answering Defendant alleges that that the injury or
24 damages plaintiff allegedly suffered were not proximately caused by any purported acts or
25 omissions of defendant.
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27 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
28 to Plaintiff's Complaint on file herein, this answering Defendant alleges that the defendant's

1 alleged actions and/or representations were neither misleading nor likely to cause confusion,
2 mistake or deception.

3 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
4 to Plaintiff's Complaint on file herein, this answering Defendant alleges that defendant did not act
5 with intent, either directly or indirectly, in connection with any of their purported acts or
6 omissions as alleged in the Complaint.
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8 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
9 to Plaintiff's Complaint on file herein, this answering Defendant alleges that this action is barred
10 because court has no subject matter jurisdiction over the causes of action alleged in the complaint.
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12 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
13 to Plaintiff's Complaint on file herein, this answering Defendant alleges that this action is barred
14 because the defendant's conduct constituted the lawful exercise of its legal rights, which does not
15 violate the Lanham Act, or any other law.

16 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
17 to Plaintiff's Complaint on file herein, this answering Defendant alleges that if defendant's
18 conduct is found to constitute infringement of plaintiff's rights, the defendant is an innocent
19 infringer, and plaintiff's damages, if any, were caused in whole or in part, by the conduct of third
20 parties.
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22 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
23 to Plaintiff's Complaint on file herein, this answering Defendant alleges that plaintiff is seeking
24 relief for intellectual property rights over which it has no legal rights and/or control.

25 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
26 to Plaintiff's Complaint on file herein, this answering Defendant alleges that Plaintiff is barred
27 from obtaining the relief sought in the Complaint because the defendant is informed and believes,
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1 and thereon alleges, that plaintiff's allegations set forth in its Complaint in this action, averring
2 trademark infringement against defendant, were made in bad faith since plaintiff is aware or
3 should be aware that the defendant has not engaged in any such actionable conduct. Accordingly,
4 by bringing such claims against defendant, plaintiff has engaged in unfair competition in violation
5 of the Lanham Act, 15 U.S.C. § 1125(a), as elucidated in *Spotless Enterprises, Inc. v. Carlisle*
6 *Plastics, Inc.*, 56 F.Supp.2d 274 (E.D.N.Y. 1999). Under *Spotless*, plaintiff's action in filing a
7 complaint containing false and/or erroneous allegations of trademark infringement, in and of
8 itself, constitutes false representations regarding goods or services in interstate commerce,
9 causing damage to the Defendant, such as to support an unfair competition claims against plaintiff
10 under the Lanham Act. The defendant is further informed and believes, and thereon alleges, that
11 such allegations were and are material in that they were likely to, and actually did, disparage the
12 defendant's name. As a direct and proximate result of plaintiff's wrongful conduct, defendant is
13 further informed and believes, and thereon alleges, that he suffered injury to his business and
14 pecuniary loss in an amount which cannot be ascertained. Said damages are likely to increase as
15 plaintiff continues to pursue its infringement claims against the defendant.
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18 AS AND FOR A FURTHER, SEPARATE AND DISTINCT ANSWER AND DEFENSE
19 to Plaintiff's Complaint on file herein, this answering Defendant alleges that it presently has
20 insufficient knowledge and information upon which to form a belief as to whether it may have
21 additional, as yet unstated, defenses. Accordingly, this answering defendant reserves the right to
22 assert additional defenses in the event discovery and/or investigation reveals a factual and/or legal
23 basis for such affirmative defenses.
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25 WHEREFORE, Defendant herein prays for judgment as follows:

- 26 1. For dismissal of Plaintiff's Complaint against Defendant with prejudice;
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1 2. An award of Defendant's costs, disbursements and any reasonable attorney's fees
2 incurred in this action; and

3 3. Any further relief as the Court deems just and proper.
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6 Dated: June __6__, 2008

MATHENY SEARS LINKERT & JAIME, LLP

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8 By: /s/ Matthew C. Jaime
9 MATTHEW C. JAIME, ESQ., Attorneys
10 for Defendant, CALIFORNIA POLICE
11 YOUTH CHARITIES, INC.
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